

CHAPTER 702. GENERAL PROVISIONS

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Authority

The provisions of this Chapter 702 issued under section 2703.1(m) of the Tax Reform Code of 1971 (72 P.S. § 9703.1(m)), unless otherwise noted.

Source

The provisions of this Chapter 702 adopted July 8, 2016, effective July 9, 2016, 46 Pa.B. 3646, unless otherwise noted.

Subchapter A. OVERVIEW

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§ 702.1. Scope.

- (a) This part establishes the practice and procedure before the Board.
- (b) This part supersedes 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent 1 Pa. Code Part II is applicable to the practice and procedure before the Board.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.1 and 31.6 (relating to scope of part; and amendments to rules).

§ 702.2. Liberal construction.

- (a) This part shall be liberally construed to secure the just, speedy and inexpensive determination of every proceeding before the Board. The Board, at any stage of a proceeding, may disregard an error or defect of procedure that does not affect the substantive rights of the parties.
- (b) The Board, at any stage of a proceeding, may waive a requirement of this part, including a deadline, when necessary or appropriate, if the waiver does not adversely affect a substantive right of either party.
- (c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

§ 702.3. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Board—The Board of Finance and Revenue.

Board's web site—www.patreasury.gov.

Business day—A day on which the Board's office is open excluding Saturdays, Sundays or legal holidays.

Chairperson—The State Treasurer or the State Treasurer's designee.

Confidential proprietary information—The term as defined in section 102 of the Right-to-Know Law (65 P.S. § 67.102).

Department—The Department of Revenue of the Commonwealth.

Electronic delivery—A method of dispatching or receiving a submittal by electronic means such as e-mail, facsimile or the Board's electronic filing system.

Order—A decision by the Board that becomes final unless a timely request for reconsideration is filed by a party and is timely granted by the Board.

Party—A petitioner seeking relief or a remedy before the Board and the Commonwealth agency against whom the petitioner seeks relief or a remedy.

Personal financial information—The term as defined in section 102 of the Right-to-Know Law.

Petition—An application to the Board in which petitioner seeks relief or remedy.

Petitioner—A taxpayer or other claimant.

Proceeding—Any matter before the Board, including a petition, hearing or claim.

Right-to-Know Law—65 P.S. §§ 67.101—67.3104.

Secretary—The secretary of the Board of Finance and Revenue, who is the Board officer with whom submissions are filed and by whom official records are kept.

Staff—The attorneys, nonattorney tax petition reviewers and administrative personnel employed to support the Board in the performance of its duties and responsibilities.

Submission—A document or evidence submitted to the Board by a party to support its claim.

Trade secret—The term as defined in section 102 of the Right-to-Know Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 702.4. Filing generally.

(a) Submissions filed with the Board shall be submitted in one of the following manners:

(1) In person or by mail to the following address:

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Secretary of the Board
Pennsylvania Board of Finance and Revenue
1101 South Front Street, Suite 400
Harrisburg, Pennsylvania 17104-2539

- (2) Electronically to bfr@ptreasury.gov.
- (3) By facsimile at (717) 783-4499

(b) When a submission for filing does not sufficiently set forth required material or is otherwise insufficient, the Board may accept it for filing and advise the person submitting it of the deficiency and require that the deficiency be corrected.

(c) The parties bear the burden of proving timely submission of an electronic petition or submission for which there was a delay due to transmittal issues.

(d) Submissions served on the Department shall be submitted in either of the following manners:

- (1) In person or by mail to the following address:

Pennsylvania Department of Revenue
Attn: BFR Matter
Office of Chief Counsel
327 Walnut Street
10th Floor, PO Box 281061
Harrisburg, Pennsylvania 17128-1061

- (2) Electronically to RA-RVOCCBFRNOTIF@pa.gov.

(e) Submissions served on the petitioner shall be submitted in either of the following manners:

- (1) In person or by mail to the address on the petition.
- (2) Electronically to petitioner's e-mail address provided on the petition.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.4, 31.5 and 33.61 (relating to information and special instructions; communications and filings generally; and applications for waiver of formal requirements).

Cross References

This section cited in 61 Pa. Code § 702.21 (relating to representation); 61 Pa. Code § 702.32 (relating to general rules); 61 Pa. Code § 703.2 (relating to petition content); 61 Pa. Code § 703.4 (relating to Department submissions); 61 Pa. Code § 703.6 (relating to service); 61 Pa. Code § 703.9 (relating to withdrawal or termination of appeal); 61 Pa. Code § 703.21 (relating to prehearing conference); 61 Pa. Code § 703.31 (relating to disposition of petitions); and 61 Pa. Code § 703.43 (relating to filing a request for reconsideration).

§ 702.5. Oaths.

(a) A Board member or the secretary will have the power to administer oaths or affirmations with respect to any proceeding.

(b) Subsection (a) supersedes 1 Pa. Code § 35.148 (relating to officer before whom deposition is taken).

§ 702.6. Formal rules of evidence.

- (a) The Board may consider the rules of evidence as it deems appropriate.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.161—35.169 and 35.173 (relating to evidence; and official notice of facts).

Subchapter B. TIME

Sec.

702.11. Date of filing.

702.12. Computation of time.

§ 702.11. Date of filing.

(a) Whenever a party's submission is required or permitted to be filed, it will be deemed to be filed on the earliest of the following dates:

- (1) On the date actually received by the Board.
- (2) On the date deposited with an IRS-designated private delivery service, as shown on the delivery receipt attached to or included within the envelope containing the submission.
- (3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or noted on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.
- (4) When a submission is submitted by means of electronic delivery on a day other than a business day, the submission will be deemed to be filed on the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

§ 702.12. Computation of time.

(a) Except as otherwise provided by statute, in computing a period of time prescribed by law, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is not a business day, in which event the period runs until the end of the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

Subchapter C. REPRESENTATION BEFORE THE BOARD

Sec.

702.21. Representation.

702.22. Limited practice before the Board.

§ 702.21. Representation.

(a) *Representative.* Appearances in proceedings before the Board may be by the petitioner or by an attorney, accountant or other representative provided the representation does not constitute the unauthorized practice of law as administered by the Pennsylvania Supreme Court.

(b) *Power of attorney.* The Board may require in any proceeding that a power of attorney, signed and executed by the petitioner, be filed with the Board before recognizing any person as representing the petitioner.

(c) *Notice of petitioner's representative.* A petitioner shall identify his representative on a petition form as required under § 703.2(a)(2) (relating to petition content).

(d) *Designated representative after petition filed.* If a petitioner authorizes a representative after the petition is filed, the petitioner shall file with the secretary a form prescribed by the Board or a letter on the petitioner's letterhead naming the representative.

(e) *Change in representative.* A change in representative that occurs during the course of a proceeding shall be reported promptly to the secretary by a method in § 702.4 (relating to filing generally).

(f) *Change in address.* A change in address that occurs during the course of a proceeding shall be reported promptly to the secretary by a method in § 702.4.

(g) *Withdrawal of representative.* Representation before the Board continues until a petitioner or petitioner's representative notifies the secretary in writing by a method in § 702.4 that the designation of representation is rescinded or until final disposition of the petition by the Board.

(h) *Supersession.* Subsections (a)—(g) supersede 1 Pa. Code §§ 31.21—31.26.

§ 702.22. Limited practice before the Board.

(a) The Board may deny, temporarily or permanently, the privilege of representing a party before it in any way to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

- (1) Lacked the competency to represent others.
- (2) Engaged in unethical, contemptuous or improper conduct with respect to any matter before the Board.
- (3) Repeatedly failed to follow Board directives.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.27 and 31.28 (relating to contemptuous conduct; and suspension and disbarment).

Subchapter D. EX PARTE COMMUNICATIONS

Sec.

702.31. Definitions.

702.32. General rules.

Cross References

This subchapter cited in 61 Pa. Code § 703.21 (relating to prehearing conference).

§ 702.31. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Communication—A verbal, written or electronic correspondence.

Ex parte communication—A communication regarding the substantive merits of a petition, outside of a public hearing and without notice and opportunity for the other party to participate.

Waiver—An acknowledgement to the staff by a party or its representative that the party chooses not to participate in a communication between the staff and the other party and agrees not to thereafter object to the communication.

§ 702.32. General rules.

(a) *Communication with Board members and staff.* Neither Board members nor staff may participate in an ex parte communication.

(b) *Written and electronic submission.* A written or electronic submission provided to the Board or staff by a party shall be promptly provided to the other party, consistent with § 703.6 (relating to service).

(c) *Notification.* The Board and staff will make every reasonable effort to avoid an ex parte communication. Upon discovery of an ex parte communication, the Board or staff will promptly notify the other party in writing by way of electronic transmittal, when available, and if not, in writing by mail as set forth in § 702.4 (relating to filing generally). The Board may take any reasonable measures deemed necessary to remedy an ex parte communication.

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